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Attorneys for Defendant
NATIONAL CITY BANK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SONIA RENAZCO,

Plaintiff,

v.

NATIONAL CITY BANK, and DOES 1
through 100,

Defendant.

Case No. 07-5947

DEFENDANT NATIONAL CITY
BANK'S NOTICE OF REMOVAL OF
ACTION FROM STATE COURT

[28 U.S.C. §§ 1331, 1332, 1441 AND
1446]

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE THAT National City Bank ("Defendant"), Defendant in the above-titled action, hereby removes this matter to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. § 1331, § 1332, § 1441, and § 1446. The grounds for removal are as follows:

Compliance with Statutory Requirements

1. On or about July 26, 2007, Plaintiff Sonia Renazco ("Plaintiff") filed a Class Action Complaint in the Superior Court of the State of California for the County of Sonoma, Case No. SCV241187, captioned *Sonia Renazco, individual, on behalf of herself and all others similarly situated, v National City Mortgage Co., a division of National City Corporation, and*

1 Does 1-100. Plaintiff improperly named National City Mortgage Co. as the defendant.
2 Defendant was never served with the original complaint.

3 2. On or about September 28, 2007, Plaintiff filed an Amended Class Action
4 Complaint, correcting the name of the defendant. The Amended Complaint is captioned *Sonia*
5 *Renazco, individual, on behalf of herself and all others similarly situated, v. National City Bank,*
6 *and Does 1-100* ("Amended Complaint"). In her Amended Complaint, Plaintiff asserts claims for
7 Restitution for Overtime Wages; Recovery of Overtime Wages; Waiting Time Penalties; Rest and
8 Meal Breaks; Wage Penalties; and Declaratory Relief.

9 3. In this matter, Plaintiff seeks class action certification of a class that would include
10 "all individuals who were employed by defendant in the position of underwriter, senior
11 underwriter, underwriter trainee, and/or any similar position that is responsible for reviewing
12 home mortgages to consumers...within the State of California during the applicable limitations
13 period." Amended Complaint, ¶ 4.

14 4. The Summons and Amended Complaint were served on Defendant effective
15 November 6, 2007. Defendant's removal of this action is timely because Defendant is removing
16 this matter within 30 days of Plaintiff's completion of service. *See* 28 U.S.C. § 1446(b).

17 5. In accordance with 28 U.S.C. § 1446(a), attached hereto as Exhibit A are true and
18 correct copies of all process, pleadings, or orders in this action.

19 6. Pursuant to 28 U.S.C. § 1446(d), Defendant promptly will provide written notice
20 of removal of the Action to Plaintiff, and promptly will file a copy of this Notice of Removal with
21 the Clerk of the Superior Court of the State of California, County of Sonoma.

22 **Intradistrict Assignment**

23 7. Plaintiff filed this case in the Superior Court of California, County of Sonoma;
24 therefore, this case may properly be removed to the Oakland Division or San Francisco Division
25 of the Northern District of California. *See* 28 U.S.C. § 1441(a); Civil L. R. 3-2(c), (d), 3-5(b).

Jurisdiction

8. This Court has federal question subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441(b) because Plaintiff's action is founded on a claim or right arising under a law of the United States, the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.

9. This Court also has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d) (as amended by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 14 ("CAFA")). Under Section 1332(d), federal courts have original diversity jurisdiction over a class action whenever: (1) "any member of a [putative] class of plaintiffs is a citizen of a State different from any defendant," 28 U.S.C. § 1332(d)(2)(A), and (2) "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs," 28 U.S.C. § 1332(d)(2). Both requirements are satisfied in this case.

Federal Question

10. Plaintiff's First Cause of Action asserts that Defendant failed to pay her and the putative class compensation for overtime work in violation of the Fair Labor Standards Act. The Fair Labor Standards Act is a law of the United States and, therefore, the Court has original jurisdiction over Plaintiff's claim. *See* 28 U.S.C. § 1331. This claim is therefore predicated on, and requires interpretation of, federal law.

11. Plaintiff's remaining state law claims are removable as part of the entire case pursuant to 28 U.S.C. § 1441(c).

Diversity Jurisdiction

12. In this matter, diversity of citizenship exists because the only defendant and at least one proposed class member are citizens of different states. *See* 28 U.S.C. § 1332(d)(2). Specifically, Defendant is a citizen of Ohio. *See* 28 U.S.C. § 1332(c)(1). Defendant is a corporation incorporated under the laws of the State of Ohio, with a principal place of business in that State. *See* Declaration of Thomas Plant, ¶ 2, attached as Exhibit B. Plaintiff, on the other hand, alleges that she resides in California. Amended Complaint, ¶ 1. Thus, based upon information and belief, Plaintiff was a citizen of the State of California at the time she filed this action, and still is. Moreover, Plaintiff's putative class consists of persons who are or were

1 employed in the position of “underwriter, senior underwriter, underwriter trainee, and/or any
 2 similar position that is responsible for reviewing home mortgages to consumers...within the State
 3 of California.” *Id.*, ¶ 4 (emphasis added).

4 13. Further, though Defendant concedes neither liability on Plaintiff’s claims nor the
 5 propriety or breadth of the class as alleged by Plaintiff, the Amended Complaint places in
 6 controversy a sum greater than \$5,000,000. *See* 28 U.S.C. § 1332(d). While the Amended
 7 Complaint does not allege a specific dollar amount in damages, Plaintiff seeks unpaid overtime
 8 wages, penalty wages, waiting time penalties, meal and break penalties, and attorneys’ fees on
 9 behalf of herself and each of the purported class members. Amended Complaint, ¶¶ 14, 19, 21,
 10 25, 27, 29, 35, 44, 45, 54, 55.

11 14. The class period commences four years prior to the filing of the complaint. *Cf.*
 12 Cal. Code of Civ. Pro. § 338(a) (establishing a three year statute of limitations for Plaintiff’s
 13 Failure to Pay Overtime Claim); Cal. Bus. and Prof. Code § 17203 (establishing a four-year
 14 statute of limitations applicable to Plaintiff’s Violation of Business & Professions Code claim).
 15 Since October 2003, Defendant employed approximately 194 individuals in exempt, underwriter,
 16 senior underwriter, underwriter trainee, and similar positions responsible for reviewing home
 17 mortgages for consumers in the State of California. *See* Declaration of Martha Heady Messman
 18 (“Messman Dec.”), attached as Exhibit C, at ¶ 4. Of these 194 individuals, approximately 135 are
 19 former employees. *Id.* at ¶ 4. Since October 13, 2003, the average tenure of these employees was
 20 approximately 65 weeks. *Id.* at ¶ 4. The lowest average annual salary of the purported class
 21 members since October 2003 was approximately \$25,000.00, and the highest approximately
 22 \$141,234.00. *Id.* at ¶ 4. Thus, assuming that these individuals averaged even four hours per
 23 week of uncompensated overtime during their tenure, and using the midpoint in the salary range
 24 of \$83,117.00 the amount in controversy for the overtime claim in this matter would be
 25 \$3,023,373.60.¹ In addition, the meal period and rest break claims place in controversy

26 ¹ The amount in controversy with respect to the unpaid overtime claim was calculated as
 follows:

27 Step 1: Divide the purported class member’s approximate midpoint salary by 2080 hours to
 28 derive the average regular rate of pay (\$39.96) (*see* Cal. Lab. C. § 515(d)); then multiply the
 average regular rate by 1.5 to calculate the average overtime rate of pay:

1 approximately \$1,007,791.20, assuming one missed meal period and one missed rest break per
 2 week over the average tenure since October 2003.² Finally, the claim for waiting time penalties
 3 places in controversy approximately \$1,323,475.20.³

4 15. In sum, the amount in controversy, as detailed in paragraph 14, is approximately
 5 \$5,354,640.00 (\$3,023,373.60 + \$1,007,791.20 + \$1,323,475.20). This does not take into account
 6 the penalties alleged under the Labor Code Private Attorneys General Act of 2004, nor does it
 7 take into account attorneys' fees.

8 16. Further, the regular rate used to calculate the potential amount in controversy set
 9 forth in paragraph 14 does not factor in commission or bonus payments, which, if added to the
 10 average salary, would increase the regular rate and thus the calculation of the amount in
 11 controversy. In short, this matter plainly exceeds the minimum amount-in-controversy
 12 requirement for CAFA diversity jurisdiction.

13 17. In establishing the amount in controversy, Defendant does not concede that
 14 Plaintiff ever worked more than forty hours per workweek or more than eight hours per day or
 15 that she is entitled to overtime pay. Nor does Defendant concede that any or all of its current or
 16

17 (continued...)

18
$$\$83,117.00 \div 2080 \times 1.5 = \$59.94$$

19 Step 2: Multiply the average overtime rate of pay by four hours of overtime and then by the
 20 average tenure for the purported class during the class period (65 weeks) to calculate the average
 overtime amount per employee; then multiply that amount by the number of members in the
 purported class:

21
$$\$59.94 \times 4 \times 65 \times 194 = \$3,023,373.60.$$

22 ² The amount in controversy with respect to the meal period and rest break claims was
 calculated as follows:

23 Multiply the number of members in the purported class by the regular rate of pay (as
 24 determined in n.1 above); then by the number of violations per week (two, one meal period
 violation and one rest break violation) by the average tenure over the class period:

25
$$194 \times \$39.96 \times 2 \times 65 = \$1,007,791.20$$

26 ³ The amount in controversy with respect to the waiting time penalty claim was calculated
 as follows:

27 Multiply the number of former employees by the regular rate of pay (as determined in n.1
 above); then by 8 hours and 30 days (See Cal. Lab. Code § 203):

28
$$135 \times \$39.96 \times 8 \times 30.$$

1 former California underwriters, senior underwriters, underwriter trainees, and/or employees in
2 any similar positions responsible for reviewing home mortgages to consumers California are
3 appropriately included in the putative class.

4 WHEREFORE, the above-titled action is hereby removed to this Court from the Superior
5 Court of the State of California, County of Sonoma.

6
7 Dated: November 26, 2007

Respectfully submitted,

8 Jones Day

9
10 By: Donna M. Mezias

11 Donna M. Mezias
12 Counsel for Defendant
NATIONAL CITY BANK

13 SFI-574040v1
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EXHIBIT A

Exhibit 1

SUPERIOR COURT
CLERK'S OFFICE
COUNTY OF SONOMA

JUL 26 2007

BY [Signature]
DEPUTY CLERK

1 H. Tim Hoffman, SBN 49141
2 Arthur W. Lazear, SBN 83603
3 Morgan M. Mack SBN 212659
4 **HOFFMAN & LAZEAR**
5 180 Grand Avenue, Suite 1550
6 Oakland, CA 94612
7 Telephone: (510) 763-5700

8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SONOMA

11 SONIA RENAZCO, individual, on behalf)
12 of herself and all others similarly situated,)

13 Plaintiffs,)

14 v.)

15 NATIONAL CITY MORTGAGE CO., a)
16 division of NATIONAL CITY)
17 CORPORATION, and DOES 1 through)
18 100,)

19 Defendants.)
20)
21)
22)

CASE NO. *SCV* **241187**

CLASS ACTION COMPLAINT FOR:

1. Restitution of Overtime Wages (B&P 17200)
2. Recovery of Overtime Wages (Labor Code 1194).
3. Waiting Time Penalties (Labor Code 203)
4. Rest and Meal Breaks (Labor Code 226.7)
5. Wage Penalties (Labor Code 210 and 226.3)
6. Declaratory Relief

23 Comes now Plaintiff SONIA RENAZCO (hereinafter "Plaintiff"), on behalf of herself
24 and all others similarly situated, and alleges:

25 **General Allegations**

- 26
- 27 1. Plaintiff SONIA RENAZCO is an individual residing in the State of California.
- 28

13 | CLASS ACTION ALLEGATIONS

A. "Subclass A" consists of all class members who, while working in a Covered Position in California during the applicable limitations period, did not receive a "salary" of at least \$455 per week (or \$155 per week before August 23, 2004). "Salary" means a predetermined amount of wages each pay period without reduction due to the quantity or quality of the employee's work. A "commission" is not a salary.

1 B. “Subclass B” consists of all class members who, while working in a
2 Covered Position in California during the applicable limitations period, received a salary of less
3 than twice the California minimum wage and either (1) had total earnings that were less than 1.5
4 times the California minimum wage, or (2) less than half of their earnings represented
5 commissions.
6

7 C. “Subclass C” consists of all class members who, while working in a
8 Covered Position in California during the applicable limitations period, were paid a salary of at
9 least twice the minimum wage.
10

11 D. “Subclass D” consists of all members of Subclass A, Subclass B and/or
12 Subclass C who, as of the date that this lawsuit was filed, were no longer employed by defendant.

13 5. Ascertainable Class. The proposed class and each subclass are ascertainable in
14 that their members can be identified and located using information contained in defendant’s
15 payroll and personnel records.

16 6. Common Questions of Fact and Law. This lawsuit is suitable for class treatment
17 because common questions of fact and law predominate over individual issues. Common
18 questions include, but are not limited to, the following: (1) whether the class members qualify for
19 exempt status under the administrative exemption; (2) whether defendant’s business qualifies as
20 a “retail or service establishment”; (3) the extent to which defendant analyzed the duties and
21 responsibilities of the class members before classifying them as exempt; (4) the number of hours
22 per week and per day class members are expected to work; (5) defendant’s expectations as to the
23 duties and responsibilities of the class members, and whether these expectations are reasonable
24 under the circumstances; (6) whether the various tasks performed by the class members qualify
25 as exempt or non-exempt tasks; and (7) whether defendant’s withholding of overtime pay and
26 deduction from wages was willful under the meaning of Labor Code section 203.
27
28

1 7. Numerosity. The plaintiff class is so numerous that the individual joinder of all
2 members is impractical under the circumstances of this case. While the exact number of class
3 members is unknown to plaintiff at this time, plaintiff is informed and believes that the entire
4 class consists of at least 100 members, and that each subclass is so numerous that joinder of the
5 members would be impracticable.
6

7 8. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the class
8 members. Plaintiff suffered an injury similar to that of the other class members as a result of
9 defendant's common practices regarding the payment of wages. In addition, plaintiff will fairly
10 and adequately protect the interests of the members of the class. Plaintiff has no interests that are
11 adverse to the interests of the other class members.
12

13 9. Superiority. A class action is superior to other available means for the fair and
14 efficient adjudication of this controversy, since individual joinder of all members of the class is
15 impractical. Class action treatment will permit a large number of similarly situated persons to
16 prosecute their common claims in a single forum simultaneously, efficiently, and without the
17 unnecessary duplication of effort and expense that numerous individual actions would require.
18 Furthermore, as the damages suffered by each individual member of the class may be relatively
19 small, the expenses and burden of individual litigation would make it difficult or impossible for
20 individual members of the class to redress the wrongs done to them, while an important public
21 interest will be served by addressing the matter as a class action. The cost to the court system of
22 adjudication of such individualized litigation would be substantial. Individualized litigation
23 would also present the potential for inconsistent or contradictory judgments. Finally, the
24 alternative of filing a claim with the California Labor Commissioner is not superior, given the
25 lack of discovery in such proceedings, the availability of fewer remedies, and the fact that the
26 losing party has the right to a trial de novo in the Superior Court.
27
28

FIRST CAUSE OF ACTION

(Restitution of Overtime Wages - On Behalf of Subclass A)

10. Plaintiff incorporates the allegations contained in paragraphs 1 through 9.

11. The Fair Labor Standards Act, 29 U.S.C. section 201 et seq. ("FLSA"), states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week. This court has concurrent jurisdiction over claims involving the FLSA pursuant to 29 U.S.C. section 216(b).

12. Subclass A members regularly work more than 40 hours per week, but are not paid overtime. Subclass A members are not "exempt" under the FLSA, because *inter alia*, they are not paid a salary of at least \$455 per week (or \$155 per week prior to August 23, 2004), and defendant's business does not qualify as a "retail or service establishment" under 29 U.S.C. section 207(I) and 29 C.F.R. sections 779.316 and 779.317.

13. Defendant has committed an act of unfair competition by not paying the required overtime pay to members of Subclass A.

14. Pursuant to Bus. & Prof. Code section 17203, plaintiff requests an order requiring defendant to make restitution of all overtime wages due the members of Subclass A, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

(Restitution of Overtime Wages - On Behalf of Subclass B)

15. Plaintiff incorporates the allegations contained in paragraphs 1 through 14.

16. Wage Order 4-2001, 8 C.C.R. section 11040, which applies to defendant's business, states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day.

1 17. Subclass B members regularly work more than 40 hours per week and/or 8 hours
2 per day, but are not paid overtime. Subclass B members are not exempt because, *inter alia*, they
3 are not paid a monthly salary equivalent to at least twice the minimum wage and they do not
4 qualify for the commissioned sales exemption under Wage Order 4-2001, section 3(D).
5

6 18. Defendant has committed an act of unfair competition by not paying the required
7 overtime pay to the members of Subclass B.

8 19. Pursuant to Bus. & Prof. Code section 17203, plaintiff requests an order requiring
9 defendant to make restitution of all overtime wages due the members of Subclass B, in an
10 amount to be proved at trial.
11

12 THIRD CAUSE OF ACTION

13 (Labor Code section 1194 - On Behalf of Subclass B)

14 20. Plaintiff incorporates the allegations contained in paragraphs 1 through 19.

15 21. Pursuant to California Labor Code section 1194, plaintiff and the Subclass B
16 members are entitled to recover their unpaid overtime compensation, plus attorneys' fees and
17 costs, in an amount to be proved at trial.
18

19 FOURTH CAUSE OF ACTION

20 (Restitution of Overtime Wages - On Behalf of Subclass C)

21 22. Plaintiff incorporates the allegations contained in paragraphs 1 through 21.

22 23. Subclass C members regularly work more than 40 hours per week and/or 8 hours
23 per day, but are not paid overtime. Subclass C members are not exempt because, *inter alia*, they
24 are production workers, they do not spend the majority of their time on exempt tasks, and they do
25 not customarily and regularly exercise discretion and independent judgment in matters of
26 consequence to defendant's business.
27
28

1 24. Defendant has committed an act of unfair competition by not paying the required
2 overtime pay to the members of Subclass C.

3 25. Pursuant to Bus. & Prof. Code section 17203, plaintiff requests an order requiring
4 defendant to make restitution of all overtime wages due the members of Subclass C, in an
5 amount to be proved at trial.
6

7 FIFTH CAUSE OF ACTION

8 (Labor Code section 1194 - On Behalf of Subclass C)

9 26. Plaintiff incorporates the allegations contained in paragraphs 1 through 25.

10 27. Pursuant to California Labor Code section 1194, plaintiff and the Subclass C
11 members are entitled to recover their unpaid overtime compensation, plus attorneys' fees and
12 costs, in an amount to be proved at trial.
13

14 SIXTH CAUSE OF ACTION

15 (Labor Code Section 203 - Waiting Time Penalties - By and on Behalf of Subclass D)

16 28. Plaintiff incorporates the allegations contained in paragraphs 1 through 27.

17 29. Defendant willfully and intentionally failed to pay plaintiff and the other Subclass
18 D members all of the wages that they were due by the deadlines imposed under Labor Code
19 sections 201 and 202. Accordingly, plaintiff and the Subclass D members are entitled to waiting
20 time penalties of up to 30 days' pay, in an amount to be proved at trial.
21

22 SEVENTH CAUSE OF ACTION

23 (Labor Code § 2699(a) - PAGA - and Labor Code § 226.7 - Rest and Meal Breaks - By and On
24 Behalf of Subclasses A, B and C)

25 30. Plaintiff incorporates the allegations contained in paragraphs 1 through 29.

26 31. California Labor Code section 2699(a), also known as the Labor Code Private
27 Attorneys General Act of 2004, states:
28

1 Notwithstanding any other provision of law, any provision of this code that
 2 provides for a civil penalty to be assessed and collected by the Labor and
 3 Workforce Development Agency or any of its departments, divisions,
 4 commissions, boards, agencies, or employees, for a violation of this code, may, as
 5 an alternative, be recovered through a civil action brought by an aggrieved
 6 employee on behalf of himself or herself and other current or former employees.

7 32. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
 8 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
 9 violator and against whom one or more of the alleged violations was committed.

10 33. Plaintiff therefore brings this action on behalf of herself and all other current
 11 and former employees.

12 34. Plaintiff has complied with the notice provisions of Labor Code section
 13 2699.3.

14 35. Defendant failed to provide the members of subclasses A, B and C with all of
 15 their required rest and meal breaks. As a result, under Labor Code section 226.7, plaintiff and
 16 the members of Subclasses A, B and C are entitled to one additional hour's pay of each day that
 17 a rest or meal break was missed, in an amount to be proved at trial.

18 EIGHTH CAUSE OF ACTION

19 (Labor Code § 2699(a) - PAGA - and Labor Code §§ 204 and 210 - Accurate Wages - By and
 20 On Behalf of Subclasses A, B and C)

21 36. Plaintiff incorporates the allegations contained in paragraphs 1 through 35.

22 37. California Labor Code section 2699(a), also known as the Labor Code Private
 23 Attorneys General Act of 2004, states:

24 Notwithstanding any other provision of law, any provision of this code that provides
 25 for a civil penalty to be assessed and collected by the Labor and Workforce
 26 Development Agency or any of its departments, divisions, commissions, boards,
 27 agencies, or employees, for a violation of this code, may, as an alternative, be
 28 recovered through a civil action brought by an aggrieved employee on behalf of
 himself or herself and other current or former employees.

38. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged

1 violator and against whom one or more of the alleged violations was committed.

2 39. Plaintiff therefore brings this action on behalf of herself and all other current and
3 former employees.

4 40. Plaintiff has complied with the notice provisions of Labor Code section 2699.3.

5 41. Labor Code sections 204 and 210 require accurate payment of wages.

6 42. By the conduct alleged above, Defendant has failed to accurately pay wages, and
7 therefore the penalty provisions of Labor Code § 210 apply.

8 43. The civil penalties provided for in these sections are in addition to any other civil
9 or criminal penalty provided by law.

10 44. Therefore, Plaintiff demands penalties under the Labor Code Private Attorneys
11 General Act of 2004 in the amounts specified in Labor Code § 210.

12 45. Furthermore, Plaintiff demands penalties under §2699(f) for violations of the
13 Labor Code for which there are no prescribed civil penalties.

14 15 NINTH CAUSE OF ACTION

16 (Labor Code § 2699(a) - PAGA - and Labor Code §§ 226 and 226.3 - Accurate Pay Stubs - By
17 and On Behalf of Subclasses A, B and C)

18 46. Plaintiff incorporates the allegations contained in paragraphs 1 through 45.

19 47. California Labor Code section 2699(a), also known as the Labor Code Private
20 Attorneys General Act of 2004, states:

21
22 Notwithstanding any other provision of law, any provision of this code that provides
23 for a civil penalty to be assessed and collected by the Labor and Workforce
24 Development Agency or any of its departments, divisions, commissions, boards,
25 agencies, or employees, for a violation of this code, may, as an alternative, be
26 recovered through a civil action brought by an aggrieved employee on behalf of
27 himself or herself and other current or former employees.

28 48. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
violator and against whom one or more of the alleged violations was committed.

1 49. Plaintiff therefore brings this action on behalf of herself and all other current and
2 former employees.

3 50. Plaintiff has complied with the notice provisions of Labor Code section 2699.3.

4 51. Labor Code sections 226 and 226.3 require accurate pay stubs.

5 52. By the conduct alleged above, Defendant has failed to provide accurate pay
6 stubs, and therefore the penalty provisions of Labor Code § 226.3 apply.

7 53. The civil penalties provided for in these sections are in addition to any other civil
8 or criminal penalty provided by law.

9 54. Therefore, Plaintiff demands penalties under the Labor Code Private Attorneys
10 General Act of 2004 in the amounts specified in Labor Code § 226.3.

11 55. Furthermore, Plaintiff demands penalties under §2699(f) for violations of the
12 Labor Code for which there are no prescribed civil penalties.

13 TENTH CAUSE OF ACTION

14 (Declaratory Relief By Plaintiff Only)

15 56. Plaintiff incorporates the allegations contained in paragraphs 1 through 55.

16 57. An actual controversy has arisen and continues to exist between plaintiff and
17 defendant concerning whether defendant's business qualifies as a "retail or service
18 establishment" under the FLSA. Plaintiff contends that defendant's business is not a "retail or
19 service establishment," whereas defendant contends that it is.

20 58. A judicial declaration is necessary and proper at this time to resolve this
21 actual controversy between plaintiff and defendant and to establish the respective rights and
22 duties of the parties.

23 PRAYER

24 WHEREFORE, plaintiff prays for a judgment against each defendant, jointly and
25 severally, as follows:
26

- 27 1. For compensatory damages according to proof;
28 2. For declaratory judgment as prayed for in the complaint;

- 1 3. For an order requiring defendant to make restitution of all wages, including
- 2 overtime wages, that were illegally withheld;
- 3 4. For interest according to proof;
- 4 5. For penalties as alleged herein;
- 5 6. For reasonable attorneys' fees; and
- 6 7. For such other relief that the Court deems just and proper.
- 7

8
9 Dated: July 13, 2007

HOFFMAN & LAZEAR

10
11
12 By: 

H. TIM HOFFMAN
Attorneys for Plaintiff

Exhibit 2

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**


NATIONAL CITY MORTGAGE CO., a division of NATIONAL CITY CORPORATION, and DOES 1 through 100

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SONIA RENAZCO, individual, on behalf of herself and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
CLERK OF COURT
COUNTY OF SONOMA

JUL 26 2007

BY  JENNY JACKSON

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Civil Branch Room 107J Branch

600 Administration Drive, Santa Rosa, CA 95403

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Morgan Mack (Bar # 212659)

HOFFMAN & LAZEAR

180 Grand Avenue, Suite 1550, Oakland, CA 94612

DATE:

(Fecha)

JUL 26 2007

DENISE L. GORDON

Clerk, by
(Secretario)CASE NUMBER:
(Número del Caso):

SON 241187

Phone No.: (510) 763-5700

Fax No.: (510) 835-1311

JENNY JACKSON, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):

- ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

(SEAL)



ORIGINAL

SUMMONS

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): Morgan Mack (State Bar # 212659) HOFFMAN & LAZEAR 180 Grand Avenue, Suite 1550, Oakland, CA 94612 TELEPHONE NO.: (510) 763-5700 FAX NO.: (510) 835-1311		FOR COURT USE ONLY SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA JUL 26 2007 BY:
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: 95403 BRANCH NAME: Civil Branch Room 107J		
CASE NAME: SONIA RENAZCO, ect. v. NATIONAL CITY MORTGAGE, ect. et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of Judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 10
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 13, 2007

MORGAN M. MACK

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ORIGINAL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA CIVIL DIVISION 600 ADMINISTRATION DRIVE, ROOM 107-J SANTA ROSA, CALIFORNIA 95403-2878 (707) 521-6500 www.sonomasuperiorcourt.com	(FOR COURT USE ONLY) JUL 26 2007 BY <u>W</u> DEPUTY CLERK
NOTICE OF ASSIGNMENT TO ONE JUDGE FOR ALL PURPOSES, NOTICE OF CASE MANAGEMENT CONFERENCE, and ORDER TO SHOW CAUSE <input type="checkbox"/> Collections (see footnote)	Case number: SON 241187

A COPY OF THIS NOTICE MUST BE SERVED WITH THE SUMMONS AND COMPLAINT
AND WITH ANY CROSS-COMPLAINT

1. THIS ACTION IS ASSIGNED TO HON. GARY NADLER FOR ALL PURPOSES. Pursuant to California Rules of Court, Rule 2.111(7), the assigned judge's name must appear below the number of the case and the nature of the paper on the first page of each paper presented for filing.
2. A Case Management Conference has been set at the time and place indicated below:

Date:	NOV 28 2007	Time:	3:45 PM	Courtroom:	20
Location:	3035 CLEVELAND AVE STE 200 SANTA ROSA CA 95403				
3. No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement [Judicial Council form #CM-110] and serve it on all other parties in the case. In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.
4. At the conference, counsel for each party and each self-represented party must appear personally or by telephone [California Rules of Court, Rule 3.670(c)(2)]; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in California Rules of Court, Rule 3.727.
5. Pre-approved dispositions are recorded three (3) court days prior to the case management conference. These may be obtained by calling (707) 521-6883 or by going to <http://www.sonomasuperiorcourt.com/tentative/index.php>.

ORDER TO SHOW CAUSE

To Plaintiff(s), Cross-complainants, and/or their attorneys of record:

If, on the date shown above, you are not in compliance with timely filing requirements stated in California Rules of Court, Rules 3.110 and/or 3.725, you must then and there show cause why this Court should not impose monetary and/or terminating sanctions.

* Telephone appearances are not allowed. Case Management Conferences in Collections cases incorporate a settlement conference. Counsel/parties with settlement authority are required to appear in person.